

REMARKS

All pending claims (claims 1-9, 11, 20-21, 23-24, and 26-33) in the present application have been finally rejected in the Final Office Action. Claims 1-9, 11, 20-21, 23-24, and 26-33 have been rejected under 35 U.S.C. §102 as being unpatentable in view of Musgrove (USP 6,535,880). It appears from the Final Rejection and the Advisory Action mailed October 11, 2007, that it is the Examiner's position that the basis for applicant's prior arguments with regard to Musgrove, namely that "a merchandising product database at a first network location is populated by obtaining merchandising data from at least one user interaction with the data at a point of presentation at a second network location", are not found in the claims. While it is applicant's position that the claims did indeed include this limitation in their previous state, applicant has amended claims 1, 2, 3, 8, 20 and 26 herein to make this point more explicit.

With this limitation now explicit, applicant reiterates its arguments previously presented with regard to Musgrove in light of the claims as amended. Musgrove seeks to provide a single web site which integrates a number of different retail sites together, thus freeing a user from having to visit the different retail sites. Easy comparison shopping and uniform buyer data collection assist buyers with the purchasing process. Reducing the number of sites a buyer needs to visit reduces the time and burden required for a buyer to purchase products.

Importantly, Musgrove seeks to reduce the number of different sites a buyer needs to visit in order to make a purchase, while the present invention benefits from a user having a relatively large number of interactions with different web sites. That is, while an objective of the present invention is to capture product data when a user is interacting with web pages (sometimes referred to as "point of presentation", see e.g., para. 0025, lines 1-4), the primary objective of Musgrove is to reduce the number of different pages with which the user actually must interact (use of a "single shopping interface", see e.g., col. 3, lines 26-26).

Stated in terms of claim 1 of the present application: a merchandising product database at a first network location is populated by obtaining product data from at least one user interaction with a presentation medium at a point of presentation at a second network location, where at least part of the product data to be acquired is transmitted to the point of presentation from a server at a third network location in response to the user interaction. In this way product data, such as product identification and/or product description, can be transferred indirectly from the third network location (e.g., a Web vendor's website) to the merchandising product database at the first network location when the product is being viewed by a user. Other useful user behavioral information could be collected and/or inferred from data collected according to the claimed invention. Applicant has previously attempted to explain the difference between this claim language and Musgrove by pointing out that in these terms, however, Musgrove discloses populating a shopping server with product data (obtained by automated Web-crawler processes and regardless of user interaction, col. 5, lines 20-21), then user interaction between only the users and the shopping server. That is, there is no "obtaining step comprising acquiring selected product information from at least one user interaction at the point of presentation with a presentation medium, wherein the selected product information includes data that is transmitted to the point of presentation from a server at a third network location in response to the user interaction" (claim 1, lines 4-8).¹

¹ In the interview with the Examiner held on September 4, 2007, the undersigned used Fig. 1 of the Musgrove reference to illustrate the difference. Applying the terminology from claim 1 of the present application to this figure, it was explained that if the first location (of claim 1) corresponds to the Shopping Server 20 of Musgrove, the second location corresponds to the Client 12 of Musgrove, and the third location corresponds to any of the Merchant Servers 40 of Musgrove, then according to claim 1, product information from interactions between second and third locations being stored in the first location means that Musgrove would have to teach storing in Shopping Server 20 product information from interactions between client 12 and Merchant Servers 40. However, the undersigned argued that this is not what Musgrove teaches. Rather, Musgrove teaches automated interactions (col. 5, lines 20-21) between Shopping Server 20 and Merchant Server 40 in order to populate Shopping Server 20, and client-side interactions limited to interactions with Shopping Server 20 (i.e., no product information from interactions between Client 12 and Merchant Servers 40). Indeed, this is the very type of interaction from which Musgrove is attempting to free the user.

It appears that it is also the Examiner's position that the shopping server 20 of Musgrove is equivalent to the presently claimed "second network location" (e.g., claim 1, line 4, as amended). However, it will be appreciated that this cannot be the case, as the shopping server 20 of Musgrove is not the "point of presentation" as that term is used in the present application (in Musgrove, this would be the client 12)². If one skilled in the art were to treat the shopping server 20 and the client 12 of Musgrove as one in the same, then the entire point of Musgrove to provide a single point of shopping for a user would be absurd – all merchant data would already be on the client computer. This is a significant change in the principle of operation of the invention disclosed by Musgrove. However, "[i]f the proposed modification ... of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." M.P.E.P. § 2143.02. Accordingly, it is improper to consider the shopping server 20 of Musgrove to be the "second network location" of the present invention.

Furthermore, as stated in Applicant's prior response, the claimed concept of obtaining product information based on a user's interaction at the point of presentation must be distinguished from what is taught by Musgrove, in which a web crawler (col. 5, lines 18-22) "scrapes" content from web sites (e.g., merchant servers 40) independent of whether a user has interacted with that content and prior to a user's visit to the shopping server.

This difference is important. In the case of crawlers, content (more particularly product information) is obtained without any indication of the significance of that content to the user population. In the case of the collection of product data from user interaction at the point of presentation (e.g., request for a Web-page containing product for actual viewing), the captured

² Claim 2 of the present application explicitly points out that the "point of presentation comprises a presentation device at the second network location on which the product is presented." Claim 3 of the present application includes the limitation that "the selected product information comprises data about the product rendered at the point of presentation at the second network location."

data in and of itself indicates that the product may have been actually viewed by a user. Conversely, if certain product information is not present in the merchandising database (after it has a reasonable amount of time for data collection), it would mean that the product may have never been requested by or presented to any user. Other user-behavioral information (e.g., how many people saw the products at a merchant site, when the products were viewed by visitors to the merchant site, how the visitors reach the merchant site) may be collected using a similar technique and/or inferred from the collected data. No such behavioral information could be inferred from product information collected by web crawlers, as there is no user interaction associated with the data collection process.

It appears it is also the Examiner's position that the Musgrove shopping server may collect data from a user interaction (e.g., a user selecting Dot Matrix Printers) and that such data would be stored in the shopping server, and thus the claims of the present invention would read on the Musgrove system. The applicant respectfully disagrees. It is now explicitly pointed out in the claims that the data being collected by the merchandising database would at least in part include data transmitted to a point of presentation (or second network location or a client device) from a third network location in response to user action at the point of presentation. For instance, certain product data maybe embedded within a Web page by the merchant, and such product data, when transmitted to the point of presentation, would be sent to the merchandising product database to be stored. This is significantly different from, and not taught nor suggested by, the teachings of Musgrove.

Thus, the undersigned concludes that there are two fundamental limitations in claim 1 not found in Musgrove:

- (1) "obtaining merchandising data related to a product from a point of presentation at a second network location, the obtaining step comprising acquiring selected product information from at least one user interaction at the point of presentation

with a presentation medium, wherein the selected product information includes data that is transmitted to the point of presentation from a server at a third network location in response to the user interaction" (claim 1, lines 3-7); and

- (2) populating a merchandising database with "the selected product information" (claim 1, line 5).

Claim 8 has at least these limitations that are not found in Musgrove:

- (1) "an interface configured ... to obtain selected product data related to a product presented at a second network location from at least one user interaction at the second network location with a Web-page served by a server at a third network location, wherein the selected product data includes data that is transmitted to the second network location from the server at the third network location in response to the user interaction" (claim 8, lines 3-6); and
- (2) a storage device for storing "the selected product data" (claim 1, line 3).

Claim 20 has at least these limitations that are not found in Musgrove:

- (1) "first computer program codes to cause the computer device to obtain merchandising data related to a product presented at a point of presentation at a second network location, the first computer program codes comprising computer program codes for acquiring selected product information from at least one user interaction at the point of presentation with a Web-page served by a server at a third network location, wherein the selected product information includes data

that is obtained by the point of presentation from the server in response to the user interaction" (claim 20, lines 4-9); and

- (2) second computer program codes to cause the computer device to populate the merchandising database with "the selected product information" (claim 20, line 7).

Likewise, as claims depending from claim 1, 8, and 20 contain all of the limitations of those base claims, these limitations are also missing from claims depending from claims 1, 8, and 20.

It is well established that "[a] claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See also M.P.E.P. § 2131. Thus, since Musgrove fails to teach each element of the claims, it cannot render those claims unpatentable under 35 U.S.C. 102(e).

Furthermore, with regard to claim 26 (and claims depending therefrom), certain content of an interactive catalog is obtained by a second network location from a third network location in response to user interaction (claim 26, lines 6-8). The content includes selected data (claim 26, lines 4-5), and such data is then communicated to a first network location from the second network location (claim 26, lines 9-10). In this way, the selected data is communicated from the third network location to the first network location when there is user interaction and without requiring a direct data transfer between the source product databases at the third network location and the merchandising product database at the first network location (claim 26, lines 11-13). The limitations "rendering in response to user interaction... at a second network location" (claim 26, line 3) and "wherein content of the rendered portion includes selected data

related to one or more products displayed within the rendered portion of the interactive catalog and wherein the content is obtained by the second network location from one or more source product databases at a third network location in response to the user interaction with the interactive catalog" (claim 26, lines 4-8) are not found in Musgrove. Neither were "communicating the selected data from the second network location to the merchandising product database at the first network location such that the selected data is communicated from the source product databases to the merchandising product database by way of the second network location in response to the user interaction" (claim 26, lines 9-13, emphasis added) and modifying the merchandising database with the "selected data" (claim 26, lines 9-10). Therefore, applicant asserts that Musgrove fails to teach each element of claim 26, and claims depending therefrom, and again pursuant to Verdegaal Bros., supra, that reference fails to render those claims unpatentable under 35 U.S.C. 102(e).

As claims dependent on claim 26 contain all the limitations of the base claim, these limitations are also missing from such dependent claims.

New claims 34-40

Applicant has added new claims 34 - 40 for consideration by the Examiner. Applicant respectfully submits that Musgrove does not teach or suggest at least these limitations:

- "receiving product data from the presentation device, wherein said product data is embedded in a presentation medium transmitted to said presentation device from a third network location, and wherein said presentation medium is transmitted to said presentation device from said third network location in response to a user action at said presentation device" (claim 34);


- "storing at least in part a representation of said product data in said merchandising product database at said first network location" (claim 34);
- "wherein said presentation medium comprises device executable code that causes said presentation device to transmit said product data to said first network location" (claim 35); and
- "wherein said product data comprises parameters specified by said third network location for storage at said merchandising product database at said first network location" (claim 39).

CONCLUSION

In view of the foregoing, applicant believes all claims pending in this application now distinguish over the cited art and are in condition for allowance. The issuance of a formal Notice of Allowance of this application at the earliest possible date is respectfully requested.

If the Examiner believes that a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-969-8300.

Respectfully submitted,



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Date: December 27, 2007